

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM DOCKET NO.: 96-192
)	
BLUESTONE BROADCASTING, INC.)	File No.: BR-950531ZF
)	
For Renewal of License)	
for Station WMTD(AM))	
in Hinton, West Virginia)	

Volume: 1
Pages: 1 through 10
Place: Washington, D.C.
Date: October 17, 1996

FCC-0ALJ RCD

OCT 25 9 39 AM '96

Barbara A. Bruckman

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:) MM DOCKET NO.: 96-192
)
BLUESTONE BROADCASTING, INC.) File No.: BR-950531ZF
)
For Renewal of License)
for Station WMTD(AM))
in Hinton, West Virginia)

Courtroom 4, Suite 201
Federal Communications
Commission
2000 L Street, N.W.
Washington, D.C.

Thursday,
October 17, 1996

The parties met, pursuant to the notice of the
Judge, at 9:30 a.m.

BEFORE: HON. RICHARD L. SIPPEL
Administrative Law Judge

APPEARANCES:

For the Licensee:

JOHN B. KENKEL, ESQ.
Kenkel and Associates
1901 L Street, N.W., Suite 290
Washington, D.C. 20036
(202) 659-4401

For the Commission:

JACQUELINE ELLINGTON, ESQ.
JAMES W. SHOOK, ESQ.
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W.
Washington, D.C. 20554
(202) 418-1430

Heritage Reporting Corporation
(202) 628-4888

I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOIR DIRE
None.

E X H I B I T S

IDENTIFIED RECEIVED REJECTED
None.

Hearing Began: 9:30 a.m. Hearing Ended: 9:39 a.m.

Heritage Reporting Corporation
(202) 628-4888

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE SIPPEL: Good morning.

ALL: Good morning, Your Honor.

JUDGE SIPPEL: Please be seated. We have a little construction going on around here.

MR. SHOOK: I see they did leave us a courtroom.

THE COURT: They did leave us some. We usually have two courtrooms.

Is everybody set to go?

MR. KENKEL: Yes.

MS. ELLINGTON: Yes, we are, Your Honor.

JUDGE SIPPEL: Okay. Let us go on the record. This is a prehearing conference. It was set, based on my order, for a station renewal of a license of an AM station in Hinton, West Virginia, under the Bureau's hearing designation order. This is one of the silent station cases.

I am going to ask counsel to please note their appearances for the record at this time.

On behalf of Bluestone Broadcasters?

MR. KENKEL: John B. Kenkel, of Kenkel and Associates.

THE COURT: Okay. Good morning, Mr. Kenkel.

MR. KENKEL: Good morning, Your Honor.

THE COURT: And on behalf of the Bureau?

MS. ELLINGTON: Jacqueline Ellington.

1 THE COURT: Ms. Ellington, good morning.

2 MS. ELLINGTON: Good morning, Your Honor.

3 THE COURT: It appears that -- well, I have
4 received, Mr. Kenkel, the status report. It is actually the
5 status report of both parties, which Mr. Kenkel provided to
6 me on the sixteenth of October. I appreciate that effort on
7 the part of both counsel. It seems like there is not too
8 much to do. As far as getting ready for the case, I mean.

9 There are two ways we can proceed on this. One,
10 of course, is going to be on a traditional taking of
11 testimony, if there are going to be issues of fact that
12 require demeanor-type testimony. Or else, summary decision,
13 and that, to me, seems like that should be the point of
14 discussion this morning.

15 Did anybody else have anything else that they
16 wanted to raise preliminarily?

17 MR. KENKEL: Nothing preliminarily, Your Honor.

18 MS. ELLINGTON: No, we did not, Your Honor.

19 THE COURT: How does the Bureau feel about this?

20 When I say "this", I mean the option of going with
21 summary decision, versus the hearing.

22 MS. ELLINGTON: Yes, we would be willing to go
23 with summary decision.

24 JUDGE SIPPEL: All right. What do you think,
25 Mr. Kenkel?

1 MR. KENKEL: We would opt for, if permitted, the
2 summary decision.

3 JUDGE SIPPEL: You want to do the summary
4 decision?

5 MR. KENKEL: Yes.

6 JUDGE SIPPEL: See, the only thing that is giving
7 me a hesitation -- and, of course, I do not know that much
8 about the underlying facts -- for example, are there reasons
9 as to -- obviously, there are -- but reasons as to why this
10 station is remaining silent? Were there any failures on the
11 part of the licensee to make proper notifications to the
12 Commission? I mean, are there any issues like that around?

13 MR. KENKEL: None. Not that I know of, no, Your
14 Honor. Not as to notification to the Commission.

15 JUDGE SIPPEL: All right.

16 MR. KENKEL: There may be an area -- I do not know
17 whether it is a disputed fact or simply a fact as to what
18 the licensee did insofar as trying to find a new site. He
19 was kicked off of the existing site and that is why the
20 station went dark.

21 JUDGE SIPPEL: Well, there does not seem to be --
22 there is no request for discovery on that.

23 MR. KENKEL: No, Your Honor.

24 JUDGE SIPPEL: So, I take it that your explanation
25 has already been given to the Bureau and they know what it

1 is. Is that right? I mean, before we get --

2 MR. KENKEL: In general, yes. And that is as much
3 as I know of it and that is as much as we passed along at
4 this time.

5 JUDGE SIPPEL: Yes. What do you say about that,
6 Ms. Ellington? Is there a fact issue here? I mean, there
7 is a matter of law. We can rule on these things.

8 But what is his story, I mean, as you understand
9 it? What is the problem here?

10 MS. ELLINGTON: Well, first of all, there do not,
11 to me, appear to be any fact issues involved. We understand
12 that the licensee lost their lease in early 1993 and they
13 have been looking for a place to relocate since then. And
14 all the STA requests that we have gotten have told us the
15 same thing, that they have been looking for a place to
16 relocate their facility. And that is about all we have.

17 THE COURT: Okay. Now, can you amplify that at
18 all? I mean, you know, Mr. Kenkel, what is going on here.
19 He has been trying to find another location?

20 MR. KENKEL: Yes.

21 THE COURT: He has been telling this to the
22 Commission?

23 MR. KENKEL: Yes.

24 THE COURT: And how come they have not been giving
25 him the STA relief?

1 MR. KENKEL: Well, they did grant the STA to
2 remain silent until the last one, which is --

3 THE COURT: Yes, but they would not extend that,
4 right?

5 MR. KENKEL: Yes. And the Bureau Chiefs' hearing
6 designation order recites that they found it insufficient.

7 THE COURT: They found your reasons insufficient.

8 MR. KENKEL: They found our reasons insufficient,
9 yes.

10 THE COURT: Well, your reasons have not changed,
11 though?

12 MR. KENKEL: No.

13 THE COURT: Well, it seems to me like it is a
14 prime candidate for summary decision.

15 Why don't we set a schedule now? I was thinking
16 that since you have indicated in your status report that you
17 do not have a need for discovery, I was going to move the
18 trial dates up anyway. I mean, when I say "up", I mean make
19 them earlier than they were set initially.

20 Would you be prepared to go forward with your
21 motion, that is, to file your motion and your supporting
22 papers by the fifteenth of November? That is a little bit
23 less than a month from now.

24 MR. KENKEL: No, Your Honor, only for this reason.
25 Bluestone is continuing its search for a site. As of

1 yesterday or the day before, it looked as if they might have
2 a site. If they can get the site, they will go ahead and
3 file an application for modification of license to the new
4 site and file a request to go back on the air.

5 THE COURT: Well, what does that have to do with
6 filing a motion on the fifteenth?

7 MR. KENKEL: Because some of the matters in the
8 motion -- I think the motion should be up-to-date when it is
9 filed. And since what they are doing is premised on getting
10 it done quickly, of course, but against the present
11 schedule, we may not be able to complete the filing of the
12 application, which I would like to have on file when the
13 motion itself is filed.

14 THE COURT: Well, I cannot indefinitely just set
15 this off.

16 MR. KENKEL: No, and, as I say, we were working
17 against the previously specified schedule. If that is moved
18 up, that is fine. But November 13 would be somewhat
19 difficult for us.

20 JUDGE SIPPEL: Why? You still would be able to
21 make your case. I mean, the point is, is that you would be
22 able to -- you would have time between now -- and I am
23 talking about the fifteenth of November, which is on
24 Friday -- to simply put -- not simply, but I mean to put
25 together a motion which is going to explain the

1 circumstances as to why you went silent, why you have
2 remained silent and what you have been trying to do to
3 extricate yourself from that situation.

4 And the Bureau's position is going to be that that
5 is not a good enough showing, or maybe they will be
6 convinced by what you say.

7 So, whatever the status of your continuing efforts
8 are between now and the fifteenth, could be incorporated,
9 certainly, in those motion papers. And then the Bureau
10 would have 14 days, under the rules, to respond to that.

11 MR. KENKEL: Well, with that, then, we could live
12 with the fifteenth, yes.

13 JUDGE SIPPEL: Any problem, Ms. Ellington?

14 MS. ELLINGTON: None, Your Honor.

15 JUDGE SIPPEL: All right. The fifteenth of
16 November, then, you file your motion. And I am going to
17 allow the days for mailing. The second of December, the
18 Bureau's comments come in. And I do recognize that that is
19 a little bit after the Thanksgiving holiday, but that should
20 not be that much of a problem, I would not think.

21 Okay, that is all I have. Anybody have anything
22 further or any questions about the procedures or anything?

23 MR. KENKEL: I do not, Your Honor.

24 MS. ELLINGTON: No, Your Honor.

25 JUDGE SIPPEL: No?

1 MR. KENKEL: No, we are content, Your Honor.

2 JUDGE SIPPEL: Well, thank you very much.

3 MR. KENKEL: Thank you.

4 JUDGE SIPPEL: It was a very efficient conference.

5 Have a good day.

6 MS. ELLINGTON: Thank you. You, too.

7 JUDGE SIPPEL: We are in recess until further call
8 or until the case is dismissed. Thank you.

9 (Whereupon, at 9:39 a.m., the proceeding was
10 recessed.)

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //


25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-192
CASE TITLE: Bluestone Broadcasting, Inc.
HEARING DATE: October 17, 1996
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 10/17/96


Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005
Gary Allen Sabel

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 10/17/96

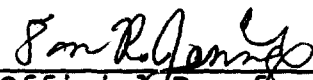
Gary A. Sabel

Official Transcriber
Heritage Reporting Corporation
Gary Allen Sabel

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 10/24/96



Official Proofreader
Heritage Reporting Corporation
Don R. Jennings